

TITLE 9

CALIFORNIA DEPARTMENT OF MENTAL HEALTH

ACTION: NOTICE OF PROPOSAL TO ADOPT PERMANENT REGULATIONS

SUBJECT: MEDI-CAL SPECIALTY MENTAL HEALTH SERVICES

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Mental Health proposes to adopt the regulatory action described below after considering all comments, objections, or recommendations regarding the proposed regulatory action.

COMMENTS: Any interested person, or his or her authorized representative, may present statements, arguments or contentions relevant to the action described in this notice. All comments submitted and received during the public comment periods that ended on January 15, 1998 and December 21, 1998 will be considered by the Department as current public comments and need not be resubmitted during the new public comment period. Any written statements, arguments, or contentions must be received by the Office of Regulations, Department of Health Services, 1600 Ninth Street, Room 150, Sacramento, CA 95814, by **5:00 p.m. on December 20, 1999**. It is requested but not required that written statements sent by mail or hand-delivered be submitted in triplicate.

Comments by fax (1-916-654-2440) or email (regs@dmhhq.state.ca.us) must be received before 5:00 p.m. on the last day of the public comment period. All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

CONTACT: Inquiries concerning the rulemaking described in this notice may be directed to Steve Appel of the Office of Regulations, by email (regs@dmhhq.state.ca.us), or telephone (1-916-654-4027). Inquiries concerning the substance of the rulemaking should be made to Teri Barthels of Managed Care Implementation at 1-916-654-5691.

Persons wishing to utilize the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

HISTORY: The first Notice of Proposal to Adopt Permanent Regulations was published in the California Regulatory Notice Register on November 14, 1997 and a hearing held on December 30, 1997. The public comment period was extended to January 15, 1998.

The rulemaking was not completed within one year of the publication date in accordance with Government Code 11346.4 (b). The Department re-issued a Notice of Proposal to Adopt Permanent Regulations that was published in the California Regulatory Notice Register on November 6, 1998 with a public comment period to December 21, 1998.

The Department has again been unable to complete the rulemaking process. Therefore, the Department is re-issuing the Notice of Proposal to Adopt Permanent Regulations. The new 45 day comment period ends on December 20, 1999. The emergency regulations identified above are in effect until July 1, 2000, or until the permanent regulations are adopted, whichever comes first (Chapter 50, Statutes of 1999).

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW: Pursuant to Title 1, Section 4(b)(1)(B)1., California Code of Regulations, the express terms of the proposed action written in plain English are available from the agency contact person named in this notice. The broad objectives of the proposed regulation are, as follows:

California Code of Assembly Bill (AB) 757 (Chapter 633, Statutes of 1994) enacted laws dealing with the provision of specialty mental health services to California's Medicaid (Medi-Cal) program beneficiaries. The statute provides for the phased implementation of managed mental health care through fee-for-service or capitated rate contracts with mental health plans (MHPs). It designates the Department of Mental Health, to the extent permitted by federal law, as the state agency responsible for developing and implementing MHPs. The design of managed care for California's Medi-Cal mental health program includes three steps, to be phased in over several years.

The first phase was the Medi-Cal psychiatric inpatient hospital services consolidation, as authorized by statute and based on the authority granted by a federal freedom of choice waiver under Section 1915 (b) of the Social Security Act, effective March 17, 1995. The Department adopted regulation sections 1700 through 1799 inclusively, in Chapter 10, in Division 1, Title 9, CCR, entitled "Medi-Cal Psychiatric Inpatient Hospital Services."

This waiver was renewed and modified on September 5, 1997, to include the second phase, "Medi-Cal specialty mental health services consolidation," with implementation beginning November 1, 1997. The Department will permanently adopt regulation sections 1810.100 through 1850.505 inclusively, in a new Chapter 11, in Title 9, Division 1, CCR, entitled "Medi-Cal Specialty Mental Health Services." This includes psychiatric inpatient hospital services consistent with Chapter 10, and new standards for additional services including rehabilitative services, targeted case management, psychiatrist services, psychologist services, EPSDT supplemental specialty mental health services, and psychiatric nursing facility services. Chapter 11 implements, interprets and makes specific the requirements brought about by the changes in the law cited above for the second phase of the Medi-Cal managed mental health care program.

The final implementation phase will be capitation, to be phased in at a later date.

NONCONTROLLING PLAIN ENGLISH SUMMARY: The Department has determined that it is not feasible to draft these regulations in plain English due to the technical nature of the

regulations; however, a noncontrolling plain English Summary of the regulations is available from the agency contact person named in the notice.

AUTHORITY: Sections 14680, Welfare and Institutions Code.

REFERENCE: Sections 1340 et seq., Health and Safety Code; Sections 5520, 5705, 5718, 5720, 5724, 5775, 5776, 5777, 5778, 5779, 5780, 10950-10965, 11400, 14000, 14005, 14007.5, 14011, 14021.3, 14021.4, 14021.5, 14104.3, 14105.98, 14132, 14142, 14145, 14640, 14680, 14681, 14682, 14683, 14684, 14685, and 16115, Welfare and Institutions Code; and Title 42, Sections 1396d(a), 1396d(r), and 1396r-4, United States Code.

MATERIAL INCORPORATED BY REFERENCE:

American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Washington, D.C., American Psychiatric Association, 1994. A copy may be purchased from the Division of Publications and Marketing, American Psychiatric Association, 1400 K Street, N.W., Washington, D.C., 20005. A copy may be examined at the Department of Mental Health, Managed Care Implementation, 1600 9th Street, Room 100, Sacramento.

Health Care Financing Administration (HCFA) Publication 15-1, Medicare Provider Reimbursement Manual, PB 97-954800, online version last update November 26, 1997. A copy may be purchased through the National Technical Information Service, Springfield, Virginia, by calling (703) 605-6060, or may be downloaded from the HCFA website: www.hcfa.gov. Also refer to Section 51516(a)(2) of Title 22, CCR.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: Additional expenditures of approximately \$169,202,000 in the current State Fiscal Year. Funding for this reimbursement is provided in the 1999 Budget Act (Item 4440-103-0001). Additional unknown cost will result from regulation requirements related to:
1. Reports which must be completed (Section 1810.375);
 2. the potential imposition of civil penalties (Section 1810.385);
 3. cultural competence (Section 1810.410);
 4. training/consultation for physical health care providers (Section 1810.415);
 5. the beneficiary problem resolution process (Section 1850.205);
 6. dispute resolution between two or more MHPs (Section 1850.405); and
 7. dispute resolution between MHPs and physical health care plans (Section 1850.505).
- B. Fiscal Effect on State Government: Additional unknown potential costs associated with:
1. Contract termination (Section 1810.325);
 2. oversight responsibilities (Section 1810.389);
 3. beneficiary fair hearing requirements (Section 1850.205); and
 4. dispute resolution between MHPs and physical health care plans (Section 1850.505).

- C. Fiscal Effect on Federal Funding of State Programs: Additional expenditures of approximately \$187,604,000 in the current State Fiscal Year, already included in the 1999 Budget Act (Items 4440-101-0001 and 4260-103-0890).
- D. Fiscal Effect on Private Persons or Businesses Directly Affected: The businesses directly affected by these regulations include managed care organizations and other entities that may have an opportunity to compete for contracts if county mental health departments elect not to accept contracts. The fiscal effect on these entities is indeterminate, since it cannot be determined whether an opportunity to contract will be available or how successful a business would be in obtaining and operating such a contract. There will be no fiscal impact on Medi-Cal beneficiaries, the persons directly affected by these regulations, since the regulations do not change current Medi-Cal laws and regulations regarding beneficiaries' fiscal obligations under the program.

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with section 17500) of Division 4 of the Government Code.

The Department has determined that the regulations would not impose other non-discretionary cost or savings on local agencies.

The Department has determined that the regulations would not have a significant effect on housing costs.

The Department has determined that the regulations would not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department finds that it is necessary for the health, safety, or welfare of the people of this state that regulation sections 1810.341, 1810.375, 1810.380, 1810.385, 1810.438, 1820.215, 1830.250, 1840.105, and 1840.316, which requires reports, apply to businesses.

The Department has determined that these regulations will affect small businesses (Medi-Cal providers) in California because they establish new requirements for participation in the Medi-Cal program for the delivery of specialty mental health services. The Medi-Cal Specialty Mental Health Services program does not impose a mandate on hospitals and mental health professionals to participate, nor does it impose a mandate on MHPs to allow any willing hospital and mental health professional to affiliate with the MHP. Hospitals and mental health professionals who affiliate with the MHP may see either an increase or a decrease in the number of Medi-Cal beneficiaries they treat and in Medi-Cal revenues, depending on the terms of the specific relationship they establish with each MHP. Hospitals that do not affiliate with the MHP may provide psychiatric inpatient hospital services to Medi-Cal beneficiaries in emergency situations and at rates established by these regulations, which will result in an indeterminate decrease in Medi-Cal revenues. Mental health professionals who do not affiliate with the MHP may continue to participate in the fee-for-service Medi-Cal program; but may provide only those specialty mental health services not covered by the MHPs; which is likely to result in a decrease in Medi-Cal beneficiaries served and Medi-Cal revenues.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS:

The Department has prepared and has available for public review an initial statement of reasons for the emergency regulations, all the information upon which the emergency regulations are based, and the text of the emergency regulations. A copy of the initial statement of reasons and the text of the emergency regulations are available upon request by writing to the Office of Regulations at the address noted above. This address will also be the location of public records, including reports, documentation, and other material related to the emergency regulations.

Also available are the public comments received during the public comment periods that ended on January 15, 1998, and December 21, 1998. These public comments will be considered by the Department as current public comments on these regulations and need not be resubmitted during the new public comment period.

Some rulemaking documents, including this notice, the emergency regulation text and the initial statement of reasons, are available from the Office of Regulations web page at <http://www.dmh.cahwnet.gov/regulation/SPEC/rulemaking.htm>

AVAILABILITY OF CHANGED OR MODIFIED TEXT: After considering all timely and relevant comments received, the Department may adopt the regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the Department adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Steven Appel, Office of Regulations, at the address indicated above. Modifications to the text will be posted on the Office of Regulations web page indicated above.

ADDITIONAL STATEMENTS AND COMMENTS: The Department has not scheduled a public hearing on this action. However, the Department will hold a hearing on December 20, 1999, if the Department receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

Reasonable accommodation or sign language interpreting services at a public hearing will be provided upon request. Such request should be made no later than 15 days prior to the close of the written comment period.

In accordance with Government Code Section 11346.5(a)(12), the Department must determine that no alternative considered by the Department would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the emergency action.

FINDING OF EMERGENCY

The basis for continuing the emergency adoption of these regulations is as follows:

The 1999 Budget Act (Chapter 282, Statutes of 1999), Item 4440-103-001, states in relevant part:

- "4. Notwithstanding any other provision of law, the emergency regulations adopted pursuant to Section 14680 of the Welfare and Institutions Code to implement the second phase of Mental Health Managed Care as provided in Part 2.5 (commencing with Section 5775) of Division 5 of the Welfare and Institutions Code shall remain in effect until July 1, 2000, or until the regulations are made permanent, whichever occurs first, and shall not be subject to the repeal provisions of Section 11346.1 of the Government Code until that time."